DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, Chief Judge

CA05-1083

October 25, 2006

LORETTA WEBB APPELLANT	AN APPEAL FROM CARROLL COUNTY CIRCUIT COURT [NO. DR2003-164]
v.	
LARRY WEBB APPELLEE	HONORABLE ALAN EPLEY, CIRCUIT JUDGE
	REVERSED AND REMANDED

In this divorce case, appellant Loretta Webb argues that the trial court erred in dividing her and appellee Larry Webb's property and in failing to recognize that the couple formed a partnership. We reverse and remand.[1]

The parties were married on May 23, 1998. Prior to that, they lived together for approximately fifteen years. During the cohabitation and the marriage, they resided on a farm known as "the home place" that appellee had owned since the 1950s. They initially lived in an old house on the property but moved into a trailer about one year before they were

[1] We previously remanded this case to settle and supplement the record in order to assure that the appeal was brought from a final order. *Webb v. Webb*, CA05-1083 (May 10, 2006) (not designated for publication). The record has now been supplemented to our satisfaction.

married. According to appellant, she put a great deal of work into repairing and remodeling the house and trailer and working on the farm; she also claims to have done substantial work on a cattle farm called Triple W Ranch, Inc., in which appellee had held an ownership interest since at least the 1970s. Appellee disputes the extent of appellant's contribution to either piece of property.

In 1987, during the parties' cohabitation, appellant's name was placed on appellee's checking account. According to appellant, she deposited her earnings into the account until the early 1990s; however, she could offer no deposit slips to prove this, and it was disputed by appellee. According to appellee, the account was never considered a joint account, and appellant's name was placed thereon as a convenience to allow her to write checks without obtaining his signature each time. Whatever the nature of this arrangement, it continued until October 1998, which was a few months after the parties were married. From that time until the end of the marriage, the parties maintained separate accounts.

Appellant and appellee separated in June 2003. Appellant filed for divorce on July 17, 2003, and on December 27, 2004, a hearing was held to determine how the couple's property should be divided.[2] Among the many items at issue were the home place and the Triple W Ranch; approximately thirty head of cattle currently possessed by appellee; proceeds from other cattle that were sold pending the divorce; a bank account and certificate of deposit; and various items of personal property. On June 9, 2005, the trial judge entered a decree in which

[2] No children were born of the marriage, and property division was the only contested matter in the divorce.

he awarded to appellee, as his separate property, the home place, the Triple W Ranch, and the bank account (into which, according to an exhibit in the record, the CD was deposited). The judge ordered the thirty head of cattle sold with appellant to receive twenty-five percent of the proceeds, and he awarded appellant twenty-five percent of the proceeds from the cattle that had been sold while the divorce was pending. Finally, the court divided equally, as marital property, various items of personalty that were listed on appellant's Exhibit 30. Appellant now appeals from the court's decree.

We first address appellant's contention that, by moving onto the home place in 1983, contributing her efforts and earnings to the home place and the Triple W Ranch, and having her name on a checking account with appellee, she and appellee created a partnership. As a result, she asserts, the trial court should have awarded her a one-half interest, as a partner, in the home place and ranch. The trial judge declined to recognize a partnership under the circumstances of this case, and we find no error in his decision.

Arkansas's Uniform Partnership Act, as effective prior to 2005, defined a partnership as "an association of two (2) or more persons to carry on as co-owners a business for profit." Ark. Code. Ann. § 4-42-201(1) (Repl. 2001); *Rigsby v. Rigsby*, 346 Ark. 337, 57 S.W.3d 206 (2001). Similarly, our supreme court has defined a partnership as a voluntary contract between two or more competent persons to place their money, effects, labor, and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. *Rigsby v. Rigsby*, *supra*. Although the entity known as a partnership may not always be defined with exact precision,

the primary test for determining the existence of a partnership is the parties' actual intent to form and operate a partnership. *See Rigsby v. Rigsby*, *supra*.

It appears that appellant views her and appellee's purported partnership more as a domestic arrangement than the business or legal entity that is contemplated by our statutes and case law. She testified that she and appellee never had a conversation about a partnership and never filed a partnership tax return; rather, they were partners "like a husband and wife." Moreover, there was conflicting evidence as to the extent of appellant's participation in the farming and cattle operations, and there was no testimony from appellee that he intended to create a partnership with appellant. Additionally, the parties, from early on in their 1998 marriage, used separate bank accounts and maintained various properties in their own names, which is contrary to an intent to have a partnership. *See generally Rigsby v. Rigsby*, *supra*. In light of these considerations, we cannot say that the trial judge's finding on this point was clearly erroneous.

We turn now to appellant's arguments concerning the division of particular items of property. Our standard of review in these matters is well established. Divorce cases are reviewed de novo on appeal. *Farrell v. Farrell*, __ Ark. __, __ S.W.3d __ (Mar. 9, 2006). The trial judge's findings as to the circumstances warranting a property division will not be reversed unless they are clearly erroneous. *Davis v. Davis*, 79 Ark. App. 178, 84 S.W.3d 447 (2002).

Arkansas Code Annotated section 9-12-315(a)(1) (Repl. 2002) provides that, at the time a divorce is entered, all marital property shall be distributed one-half to each party

unless the court finds such a division to be inequitable. All other property shall be returned to the party who owned it prior to the marriage, unless the court shall make some other division that the court deems equitable. Ark. Code Ann. § 9-12-315(a)(2). If the trial court makes some other division of property, it shall take certain statutory factors into account and recite, in its order, the basis and reasons therefor. Ark. Code Ann. §§ 9-12-215(a)(1)(B) and (a)(2) (Repl. 2002). The statute does not compel mathematical precision in the distribution of property; it simply requires that marital property be distributed equitably. *Baxley v. Baxley*, 86 Ark. App. 200, 167 S.W.3d 158 (2004). The trial judge is vested with a measure of flexibility in apportioning the total assets held in the marital estate upon divorce, and the critical inquiry is how the total assets are divided. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996). The judge is given broad powers, under the statute, to distribute all property in divorce cases, marital and non-marital, in order to achieve an equitable distribution. *Id*.

Appellant argues that the trial court erred in several aspects of its property division: 1) finding that certain items of personalty were marital property rather than appellant's separate property; 2) failing to award her an equitable interest in two pieces of real property; 3) failing to award her a one-half interest in certain cattle and cattle-sale proceeds; 4) failing to award her one-half of the money in appellee's checking account and certificate of deposit. We begin by addressing her arguments concerning the cattle and cattle-sale proceeds.

There was evidence at trial that, after the parties separated but before they were divorced, appellee made two cattle sales for which he received almost $16,000. The trial

court, referring to one of appellant's exhibits, determined that the cattle sold by appellee had likely been purchased during the marriage, stating, "it is obvious to the Court that the cattle sold may have been purchased in 1998, 2000, 2001, and 2003." There was also testimony that appellee consistently kept thirty head of cattle and that, at the time of the hearing, he was "running" thirty head on his property, despite having recently made two sizeable sales.

Marital property is all property acquired subsequent to marriage except for the categories specifically listed in Ark. Code Ann. § 9-12-315(b) (Repl. 2000), *see Cole v. Cole*, 82 Ark. App. 47, 110 S.W.3d 310 (2003), which exceptions are not applicable here. Despite the evidence and the trial court's own findings indicating that the cattle were acquired during the marriage, the court awarded appellant less than a one-half interest in the cattle and cattle-sale proceeds and did not offer an explanation therefor. Marital property should either be divided equally or the trial court should state its reasons why such a division would be inequitable. *See Coombe v. Coombe*, 89 Ark. App. 114, __ S.W.3d __ (2005) (holding that cattle acquired during marriage are marital property); *Baxley v. Baxley*, *supra*. Because that was not done in this case, the trial court erred.

Appellee, in his brief, offers explanations for the trial court's ruling, but we do not believe those explanations are availing. He contends that there was "confusion" over the number of cattle he owned at the time of the hearing and whether the cattle he sold had been acquired during the marriage. We do not believe that the trial court expressed serious confusion on these points, and the decree shows that the court had little difficulty in making the abovementioned findings based on the testimonial and documentary evidence. Appellee

also argues that the court's 75/25 division of the cattle is supported by the fact that appellant was allowed to keep the Wal-Mart stock she owned. However, the trial court did not link these two items of property together; appellant was awarded her Wal-Mart stock because "the acquisition of this asset was solely through her efforts," not to compensate for her receiving a lesser share of the cattle. Even where the evidence may support an unequal division of marital property, the trial judge still must state findings explaining why the division was unequal. *Baxley*, *supra*.

Based on the foregoing, we reverse and remand the trial court's decree without addressing appellant's additional assignments of error, anticipating that the significant change in the property division occasioned by our opinion may cause the court to re-visit the property division in other respects. As we recognized in *Coombe v. Coombe*, *supra*, although our review is de novo, justice may be better served by remanding the case for a complete resolution of the parties' property rights in a manner consistent with our opinion; and, in conducting such further proceedings, the trial judge will not be bound by prior determinations regarding the division of property and may permit the introduction of such additional evidence as is necessary for a just resolution of the issues.

However, we do observe that the decree does not state whether, in awarding the checking account to appellee, the award includes the CD deposited therein. This matter should be clarified in the next decree.

Reversed and remanded.

BIRD and NEAL, JJ., agree.